

# MASTER POWER PURCHASE AND SALE AGREEMENT

## AMENDED AND RESTATED COVER SHEET

This *Amended and Restated Master Power Purchase and Sale Agreement (Version 2.1, modified April 25, 2000)* ("Master Agreement") is made as of the following date: April 22, 2002 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Party A: **CONSTELLATION POWER SOURCE, INC.**

Name: **State of California Department of Water Resources** separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("California Department of Water Resources" or "Party B")

All Notices:

All Notices: DWR/CERS

Attn: Executive Manager Power Systems

Street: 111 Market Place, Suite 500

Street: 3310 El Camino Avenue, Suite 120

City/State: Baltimore, MD Zip: 21202

City/State: Sacramento, California 95821

Attn: Contract Administration

Attn: Executive Manager Power Systems

Phone: 410-468-3620

Phone: (916) 574-0339

Facsimile: 410-468-3540

Facsimile: (916) 574-2512

Duns: 01-563-5220

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

### Invoices:

Attn: Jack Disney

Attn: Settlements Unit; Doreen Singh

Phone: 410-468-3620

Phone: (916) 574-0309

Facsimile: 410-468-3540

Facsimile: (916) 574-1239

### Scheduling:

Attn: Ryan Fitzpatrick

### Scheduling:

Attn: Power Dispatcher

Phone: 410-468-3530

Phone: 916-574-0161

Facsimile: 410-468-3540

Facsimile: (916) 574-2569

### Payments:

Attn: Thomas Marlatt

### Payments:

Attn: Cash Receipts Section

Phone: 410-468-3620

Phone: (916) 653-6892

Facsimile: 410-468-3540

Facsimile: (916) 654-9882

### Wire Transfer:

BNK:

### Wire Transfer:

BNK:

ABA:

for Department of Water Resources

ACCT:

ABA:

ACCT:

### Credit and Collections:

Attn: John R. Collins

### Credit and Collections:

Attn: Credit Manager

Phone: 410-468-3410

Phone: (916) 574-1297

Facsimile: 410-468-3499

Facsimile: (916) 574-2512

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: David M. Perlman  
Phone: 410-468-3490  
Facsimile: 410-468-3540

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Financial Officer  
Phone: (916) 574-1297  
Facsimile: (916) 574-2512

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff      Tariff: Market-Based      Dated: May 15, 1997      Docket Number: ER97-2261

Party B Tariff      Tariff: Not applicable      Dated:      Docket Number:

---

**Article Two**

Transaction Terms and Conditions      ☐ Optional provision in Section 2.4. If not checked, inapplicable.

---

**Article Four**

Remedies for Failure to Deliver or Receive      ☐ Accelerated Payment of Damages. If not checked, inapplicable.

---

**Article Five**

Events of Default; Remedies

☐ Cross Default for Party A: Not Applicable

☐ Party A:      Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Cross Default for Party B: Not Applicable

☐ Party B:      Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

☐ Option A (Applicable if no other selection is made.)

☐ Option B- Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

☒ Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☐ Option A

☐ Option B Specify: \_\_\_\_\_

☒ Option C Specify: Annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to

advise all such sellers of the financial condition of the Fund.

(b) Credit Assurances:

- ☒ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$\_\_\_\_\_ provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ -0-

Party B Rounding Amount: \$ -0-

(d) Downgrade Event:

- ☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

Other:

Specify: \_\_\_\_\_

(e) Guarantor for Party B: Not Applicable

Guarantee Amount: \_\_\_\_\_

8.2 Party B Credit Protection:

(a) Financial Information:

- ☒ Option A  
☐ Option B Specify: \_\_\_\_\_  
☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- ☒ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ -0-

Party A Rounding Amount: \$-0-

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:

Specify: \_\_\_\_\_

(e) Guarantor for Party A: Not Applicable

Guarantee Amount: \_\_\_\_\_

---

**Article 10**

Confidentiality

☐ Confidentiality Applicable

☐ If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System

☒ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6 If not checked, inapplicable

☐ Add Section 8.6 If not checked, inapplicable

Other Changes: Applicable

Specify, if any: See below

**Part 1. GENERAL TERMS AND CONDITIONS.**

**(a) Definitions.**

(1) Section 1.11 is amended by adding the following sentence at the end of the current definition: "The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."

(2) Section 1.51, "Replacement Price" shall be amended on the fifth line by deleting the phrase "at Buyer's option" and inserting the following phrase: "absent a purchase".

(3) Section 1.53, "Sales Price" shall be amended on the fifth line by deleting the phrase "at Seller's option" and inserting the following phrase: "absent a sale".

(4) Section 1.46 "Potential Event of Default" is deleted.

(5) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

(6) Section 1.59 is amended by changing "Section 5.3" to "Section 5.2."

(7) Sections 1.62 through 1.71 are added to Article One as follows:

1.62 "Bonds" means the bonds offered by Department pursuant to ABX1, as amended, codified at California Water Code Section 80100, et seq. ("the Act"), with recourse only to the Trust Estate, and shall include any financing pursuant to Executive Order D 42 01 and a Credit and Security Agreement, dated as of June 26, 2001, by and among the Department, various lenders and Morgan Guaranty Trust Company of New York, as agent on behalf of such lenders.

1.63 "Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.

1.64 "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

1.65 "Market Value" shall have the meaning set forth in Section 5.3.

1.66 "Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 5.3.

1.67 "Qualified Electric Corporation" means an electrical corporation, as defined by the Act, whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Corporation and Baa2 or better by Moody's Investor Services; provided, however, that, with the exception of San Diego Gas and Electric Company, Southern California Edison Company and Pacific Gas and Electric Company no electrical corporation shall be a Qualified Electric Corporation without CPS's written agreement.

1.68 "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor, and Baa2 or better by Moody's Investor Services, or its successor.

1.69 "Replacement Agreement" means any agreement identical to this Agreement excluding any and all information and checked elections on the Cover Sheet above (such information and

checked elections shall be negotiated between Party A and the relevant Qualified Electric Corporation), Schedule M, Section 1.64, Section 1.65, Section 1.66, and paragraphs (c), (e), (i), (j), (k) and (l) hereof, together with such additional changes as Party A and the relevant Qualified Electric Corporation shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Agreement and that it constitutes a novation for which there is adequate consideration.

1.70 "Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.

1.71 "2001A Transaction" means the Transaction described in the attached Amended and Restated Confirmation dated April 22, 2002.

1.72 "Trust Estate" means all revenues under any obligation entered into by, and rights to receive the same from, and moneys on deposit in, the Fund and income or revenue derived from the investment thereof.

**(b) Transactions.** The Transaction shall be in writing and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5.

**(c) Governing Terms.** Section 2.2 is amended by adding the following sentence at the end of the current section:

"Notwithstanding the foregoing, the 2001A Transaction shall be treated as a stand-alone Transaction and accordingly (a) provisions in the Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable to the 2001A Transaction, (b) an Event of Default with respect to any Transaction other than the 2001A Transaction shall not affect the 2001A Transaction. Except for the attached confirmation dated March 9, 2001, no provision of any Confirmation entered into pursuant to Section 2.4 shall affect the 2001A Transaction."

**(d) Events of Default.** The following shall be added to the end of Section 5.1 as an additional Event of Default:

(i) for Party B, any amendment or repeal of the Water Code, or the promulgation of any regulations under the Water Code subsequent to the date hereof, that adversely affects the ability of Party B to perform its obligations under this Agreement or otherwise adversely affects the rights of Party A hereunder shall constitute an Event of Default with Party B as the Defaulting Party.

**(e) Declaration of an Early Termination Date and Calculation of Termination Payment**

(1) The last sentence of Section 5.2 is replaced in its entirety by the following: "The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party."

(2) The following shall be added to the end of Section 5.2 (as amended by clause (1) immediately above): "Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee,

liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

(3) Section 5.3 is replaced in its entirety by the following:

"5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.
- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 10.14 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

(4) Sections 5.4, 5.5, 5.6, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

**(f) Article Seven** shall be amended as follows:

(1) The fifth sentence of Section 7.1 shall be amended by deleting the phrase "UNLESS EXPRESSLY HEREIN PROVIDED."

(2) Add a new Section 7.2. "The obligations hereunder of Party A shall be solely those of Party A and no other person or entity."

**(g) Term of Master Agreement.** The first sentence of Section 10.1 shall be amended by deleting the phrase "terminated by either Party upon (thirty) 30 days prior written notice" and in its place the phrase

"the day following the last day of the Term or Delivery Period set forth in a Transaction, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default".

**(h) Governmental Charges.** The following two sentence shall be added to the end of Section 9.2:

"Seller shall be entitled to pass through to Buyer any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition enacted by the California state legislature after the date of this Agreement that is not of general applicability and is instead directed at assets or activities involved in the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services. Buyer shall be entitled to the benefit of a reduction of or credit with respect to any such tax or other imposition enacted by the California state legislature after the date of this Agreement."

**(i) Representations and Warranties.** The following change shall be made to Section 10.2:

Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of Section 10.2.

**(j) Indemnity.** The phrase "To the extent permitted by law" is added at the beginning of the first two sentences of Section 10.4.

**(k) Assignment.** Section 10.5 is replaced in its entirety by the following:

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, Party A (or, with respect to clause (i), (iv) or (v) Party B) may without the consent of the other Party (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party, (iv) in the case of Party B only, transfer or assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of Party B under the Act whose creditworthiness is equal to or higher than Party B's; or (v) in the case of Party B only, transfer or assign this Agreement to any Qualified Electric Corporation, as defined by the Act, whose creditworthiness is equal to or higher than Party B's; provided, further, that in any such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurances, together with such assurances as to the sufficiency of the creditworthiness of such assignee to perform its obligations hereunder, as the non-transferring Party may reasonably request; and provided, further, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party B, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof unless and until the bond trustee or any successor or assign shall foreclose on such collateral in which case such bond trustee or its successor or assign shall be bound by each of the provisions hereof, including the immediately preceding proviso; and provided, further, in the case of (v) above that, such assignee executes appropriate assignment documents, including without limitation the then applicable Edison Electric Institute Master Power Purchase and Sale Agreement, with such revisions, addenda, additional terms and provisos, including without limitation reasonable credit protection terms appropriate to the circumstances, and provides assurances regarding such electric corporation's ability to charge rates sufficient to meet its obligations under this Agreement, as, in each case, the non-assigning Party desires in the good faith and reasonable exercise of its discretion, under the then applicable circumstances and in light of the identity of the proposed assignee.

**(l) Novation.** At any time after January 1, 2003, notwithstanding any other limitation on assignment herein, the Seller shall, upon at least (60) days written notice by Party B, enter into a Replacement Agreement with a Qualified Electric Corporation. Simultaneous with such notice, Party B shall notify the relevant Qualified Electric Corporation and make a request to the California Public Utilities Commission to require such Qualified Electric Corporation to enter into good faith negotiations with Seller for the purpose of making appropriate modifications to the Replacement Agreement. This Agreement shall terminate upon



the effectiveness of such Replacement Agreement. The effectiveness of the Replacement Agreement shall constitute a novation which shall relieve Party B of any liability or obligation arising after the date of termination of this Agreement, except for the payment of amounts due for performance prior to such termination date.. Seller's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the Public Utilities Code with respect to such Replacement Agreement

**(m) Governing Law.** In Section 10.6, "New York" shall be replaced with "California."

**(n) General.** The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.

**(o) Additional Provisions.** New Sections 10.12, 10.13, 10.14, 10.15, 10.16 and 10.17 shall be added to Article 10 as follows:

**10.12 No Retail Services; No Agency.**

- (a) Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder directly to or for retail customers of any person.
- (b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

**10.13 No Interference; No Adverse Actions.**

Party B, on its own behalf, and on behalf of the State of California and all of its public agencies (including the State Attorney General), departments, subdivisions, boards and organizations, agrees to work in good faith to resolve, to the satisfaction of Party A, acts or omissions (other than as otherwise required to be done by a public agency pursuant to the legal exercise of such public agency's statutory mandate) which Party A believes would have a significant effect on (a) Party A's right or ability to (x) sell and deliver, or cause to be delivered, Product to Party B or (y) otherwise satisfy its obligations under this Agreement or (b) Party B's right or ability to (x) purchase and receive, or cause to be received Product from Party A or (y) otherwise satisfy its obligations under this Agreement.

**10.14 No Third Party Beneficiaries.**

The provisions of this Agreement are for the benefit of the Parties hereto, and as to any other person or entity, this Agreement shall not be construed as a third party beneficiary contract

**10.15 Fixed Rate Contract**

The Parties hereby stipulate and agree that this Agreement, including any Transaction hereunder, is a fixed rate contract and that it was entered into as a result of arms-length negotiations between the Parties. The Parties intend that the rates, terms and conditions of this Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, and anticipate that the rates, terms and conditions of this Agreement will remain so over the life of the Agreement. The Parties hereby further stipulate and agree that neither Party may bring any action, proceeding or complaint under Section 205 or 206 of the Federal Power Act, 16 U.S.C. 824d or 824e, seeking to modify, cancel, suspend, or abrogate the rates, terms and conditions of this Agreement or any Transaction hereunder, or to prevent this Agreement or any Transaction hereunder from taking effect.

**10.16 CAISO Imbalance Markets.** Party A shall not make any purchases from the CAISO imbalance markets to effect delivery under the 2001A Transaction;

10.17 Arbitration. Any claim, counterclaim, demand, cause of action, dispute, or controversy arising out of or relating to this Agreement, any provision hereof or, the alleged breach thereof, involving the Parties and/or their respective representatives (for purposes of this Section 10.17 only, collectively the "Claims"), shall be resolved by binding arbitration. Arbitration shall be conducted in accordance with the Complex Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the Parties' Claims, the arbitrators shall refer to the governing law identified below. It is agreed that the arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal law, or under the Federal Arbitration Act, or under the Commercial Arbitration Rules of the American Arbitration Association, the Parties hereby waiving their right, if any, to recover any such damages. The arbitrators shall be limited to determining direct compensatory damages in accordance with the provisions of this Agreement. The arbitration proceeding shall be conducted in Los Angeles, California. Within twenty (20) days of the notice of initiation of the arbitration procedure, the respondent shall file a response in writing. Within thirty (30) days after the response, each party shall select one arbitrator. Within twenty (20) days thereafter, the two (2) arbitrators shall select a third arbitrator. All three arbitrators are required to be neutral and impartial and shall take an oath at the first session of the arbitration affirming same. None of the three arbitrators shall have business, professional or social relationships with any of the parties. However, upon full disclosure of such relationships, all parties may agree that the arbitrator may serve as an arbitrator. The arbitration shall proceed within sixty (60) days after the appointment of the last of the three arbitrators. The arbitrators shall render their decision (by majority rule) within twenty (20) days after the conclusion of the arbitration. California law shall apply to the subject matter of the arbitration. To the fullest extent permitted by law, the arbitration and the award resulting from the arbitration shall be maintained in confidence by the parties and the arbitrators.

**(p) Schedule M.** Schedule M shall be amended as follows:

- (1) In Section A, "Act" will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code, as amended.
- (2) "Special Fund" will mean the Fund.
- (3) In Section A, the defined term "Governmental Entity or Public Power System" shall be replaced with the term "Governmental Entity" using the following definition "'Governmental Entity'" means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System"; and all references to (A) "Governmental Entity or Public Power System" (and cognates) and (B) "Public Power System" (and cognates) in Schedule M shall be replaced with the new defined term "Governmental Entity" (using the applicable cognate).
- (4) In Section C add the following representations and warranties:
  - (i) "Party B represents and warrants continuously during the term of this Agreement (including for purposes of Section 5.1(b)) that at all times Party B will be entitled to recover, and the Public Utilities Commission will approve and impose, rates sufficient to enable Party B to recover its revenue requirements on a timely basis."
  - (ii) This Amended and Restated Master Power Purchase and Sale Agreement is a "Priority Long Term Power Contract" as that term is defined in the Rate Agreement By and Between State of California Department of Water Resources and State of California Public Utilities Commission adopted by the California Public Utilities Commission on February 21, 2001 in Decision 02-02-051.
- (5) In Section D, delete Section 3.5 and replace it with the following:

"3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court or in connection with any arbitration proceeding undertaken, in the case of such arbitration, pursuant to Section 10.17 hereof."

(6) In Section G, specify that the laws of the State of California will apply.

(7) Add a new Section H, which shall read as follows:

"3.7. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund."

(8) Add a new Section I, which shall read as follows:

"3.8. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement."

(9) Add a new Section J, which shall read as follows:

"3.9. No More Favorable Terms. Party B shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A."

(10) Add a new Section K, which shall read as follows:

"3.10. Sources of Payment; No Debt of State. Party B's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement."

(11) Add a new Section L, which shall read as follows:

"3.11. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that the provisions of the Government Code and the Public

Contracts Code applicable to state contracts are therefore not applicable to or incorporated in this Agreement."

(12) Add a new Section M, which shall read as follows:

"3.12. Electric Corporations as Agents. Party B shall establish the terms and conditions for the segregation of moneys received by electrical corporations pursuant to Section 80106 pending their transfer to Party B in accordance with Section 80112 of the Water Code."

(13) Add a new Section N, which shall read as follows:

"3.13. Deposit of Proceeds of Bonds. The proceeds of any bonds issued by Party B shall be deposited and applied in accordance with the resolution or indenture providing for the issuance thereof."

(14) Add a new Section O, which shall read as follows:

"3.14. Transfers of Power Charge Revenues and Bond Charge Revenues. The indenture providing for the issuance of any bonds or other indebtedness by Party B will expressly provide that Power Charge Revenues and Bond Charge Revenues will be applied at the times and in the manner provided in the document entitled "California Department of Water Resources Summary of Material Terms of Financing Documents (Submitted in connection with Section 7.10 of a proposed Rate Agreement between California Department of Water Resources and the California Public Utilities Commission)" under the captions "III. Flow of Funds - Power Charge Revenues; Bond Charge Revenues."

(15) Add a new Section P, which shall read as follows:

"3.15 Termination Without Recourse. (a) In addition to any other termination rights herein, Party A shall have the right, but not the obligation, to terminate all Transactions without recourse against Party B for any Termination Payment or other costs and without any further obligation or liability of either Party A or Party B, if Party B fails to maintain an underlying rating on the Bonds (without regard to credit enhancement) of Baa3 or better by Moody's or BBB- or better by S&P and such failure continues for 30 or more consecutive days. In the event Party A elects to terminate this Agreement, notwithstanding the provisions of Section 6.2, Party B shall pay all amounts due hereunder within five (5) days."

(b) In addition to any other termination rights herein, Party B shall have the right but not the obligation, to terminate all Transactions without recourse against Party A for any Termination Payment or other costs and without any further obligation or liability of either Party A or Party B, if (i) Party A fails to provide and maintain a guarantee provided by a related party to Party A which related party shall maintain a rating on its long-term unsecured senior debt (without regard to credit enhancement) of Baa3 or better by Moody's or BBB- or better by S&P and (ii) if any failure to maintain such a rating continues for 30 or more consecutive days. and (iii) Party A fails to post substitute credit assurance within fifteen (15) Business Days thereafter in the form of either a Letter of Credit or cash. In the event that Party A posts substitute credit assurance, the amount of such substitute credit assurance shall be the Termination Payment that would be payable if Seller were the Defaulting Party determined semi-annually.

(16) Add a new Section Q, which shall read as follows:

"3.16. Collection Efforts. Party B agrees that it will exercise all rights and use all remedies available to it to collect from retail end use customers all amounts necessary to fund

Party B's revenue requirements described in Section 80134 of the Water Code or otherwise owed to Party B for such power."

**(q) Conditions Precedent.** Party A's obligations under this Agreement and all Transactions thereunder are subject to and conditioned upon:

(a) delivery of an executed settlement agreement substantially in the form attached hereto as Exhibit A.

**Part 2. SCHEDULE P**

The following definitions are hereby added to Schedule P:

"CAISO Firm Energy (LD)" means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator ("CAISO") (as amended from time to time, the "Tariff") for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the Tariff).

This Master Agreement supersedes the *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) made as of the following date: March 9, 2001.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

**Party A – CONSTELLATION POWER SOURCE, INC.**

**Party B – DEPARTMENT OF WATER RESOURCES, with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

**MASTER POWER PURCHASE AND SALE AGREEMENT  
AMENDED AND RESTATED CONFIRMATION LETTER**

This Amended and Restated Confirmation Letter shall confirm the Transaction agreed to on April 22, 2002 between **Constellation Power Source, Inc.** ("CPS" or "Party A") and **DEPARTMENT OF WATER RESOURCES**, with respect to the **Department of Water Resources Electric Power Fund** separate and apart from its powers and responsibilities with respect to the **State Water Resources Development System** ("CDWR" or "Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: CPS

Buyer: CDWR

Product:

- ☐ Into \_\_\_\_\_, Seller's Daily Choice
- ☐ Firm (LD)
- ☐ Firm (No Force Majeure)
- ☐ System Firm  
(Specify System: \_\_\_\_\_)
- ☐ Unit Firm  
(Specify Unit(s): \_\_\_\_\_)
- ☒ Other: CAISO Firm Energy (LD)
- ☐ Transmission Contingency (If not marked, no transmission contingency)
- |   |                                 |                                |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> FT-Contract Path Contingency   | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> FT-Delivery Point Contingency  | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Transmission Contingent        | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Other transmission contingency |                                 |                                |
- (Specify: \_\_\_\_\_)

Delivery Period: Product 1: April 1, 2001 through and including June 30, 2003; delivered hour ending ("HE") 0700 Pacific Prevailing Time ("PPT") through HE 2200 ("6 X 16") each Monday through Saturday, excluding NERC holidays

Product 2: May 1, 2002 through and including October 31, 2002 and May 1, 2003 through October 31, 2003 (excluding November 1, 2002 through April 30, 2003); delivered each hour.

## EXECUTION COPY

Contract Quantity: Product 1: 200 MWh delivered HE 0700 Pacific Prevailing Time (“PPT”) through HE 2200 (“6 X 16”) each Monday through Saturday during the Delivery Period, excluding NERC holidays Product 2: 400 MWh delivered each hour during the Delivery Period.

Delivery Point: Product 1: SP 15  
Product 2: NP 15

Price: Product 1: \$154  
Product 2: \$55

Scheduling: Scheduling must be completed with CPS for the Day Ahead Market by 1000 pursuant to WSCC Guidelines.

### Special Conditions:

(1) Material Modification or Elimination of an Applicable Delivery Point. In the event that the California Independent System Operator ("CAISO") or its successor eliminates or materially modifies the characteristics of an Applicable Delivery Point such that either CPS or CDWR is adversely affected thereby, CPS shall, upon such elimination or modification, deliver the Product to a delivery point reasonably determined by it to approximate the location and characteristics of an Applicable Delivery Point on the date of the execution of this Confirmation Letter ("Modified Delivery Point"). If CPS reasonably determines that no Modified Delivery Point exists, the parties shall negotiate a mutually agreeable replacement delivery point ("Replacement Delivery Point") for such delivery. Once CPS or CDWR determines that an Applicable Delivery Point will be modified or eliminated such that it will be adversely affected thereby, it will notify the other party as soon as practicable.

“Applicable Delivery Point” shall mean SP 15 with respect to Product 1 and NP 15 with respect to Product 2.



**EXECUTION COPY**

This Confirmation Letter is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement dated March \_\_, 2002 (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. This amended and restated confirmation letter supersedes the Confirmation dated March 9, 2001. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

**CONSTELLATION POWER SOURCE, INC**

**DEPARTMENT OF WATER RESOURCES, with  
respect to the Department of Water Resources  
Electric Power Fund separate and apart from its  
powers and responsibilities with respect to the  
State Water Resources Development System**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_